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November 20, 1997

HAND DELIVERED

Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission
DOCKETED

NOV 20 1997

Re: Docket No. U-2428-96-417
U-3175-96-479

DOCKETED BY

To The Commission:

On October 24, 1997, U S WEST Communications, Inc. ("U S WEST") requested that the Arizona Corporation Commission ("Commission") relieve U S WEST of certain obligations under the interconnection agreements entered into with AT&T Communications of the Mountain States, Inc. ("AT&T") and MCIMetro Access Transmission Services, Inc. ("MCI") and that the Commission modify the interconnection agreements to indicate a change in U S WEST's obligations regarding combinations of unbundled elements. AT&T filed a response to U S WEST's request on November 6, 1997.

Enclosed is an order of the Minnesota Public Utilities Commission ("Minnesota Commission") issued November 6, 1997 denying GTE of Minnesota's ("GTE") petition for rehearing, reargument, reconsideration and amendment on issues relating to combinations of unbundled elements. In this order, the Minnesota Commission rejected the GTE claim that based on the Eighth Circuit Court of Appeals decision, the interconnection agreement previously approved by the Commission and-- like the interconnection agreements in Arizona--currently on appeal with the federal court, must be revised to comply with federal law.

In denying the petition, the Minnesota Commission noted that "... Not only does GTE have alternative forums for resolving these issues, but one of them - renegotiation and alternative dispute resolution - is explicitly endorsed by the contract negotiated by the parties..."

The Order by the Minnesota Commission supports the arguments made by AT&T in its November 6 filing and AT&T requests that the Commission take judicial notice of the Minnesota Commission Order.

Sincerely,

Enclosure
cc: All parties on service list

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Gregory Scott
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of AT&T Communications of
the Midwest, Inc.'s Petition for Arbitration
with Contel of Minnesota, Inc. d/b/a
GTE Minnesota under Section 252(b) of the
Federal Telecommunications Act of 1996

ISSUE DATE: November 6, 1997

DOCKET NO. P-442,407/M-96-939

In the Matter of Modifications to an
Interconnection Agreement Between
AT&T Communications of the Midwest, Inc.
and Contel of Minnesota, Inc. d/b/a
GTE Minnesota

DOCKET NO. P-442,407/M-97-772

ORDER DENYING PETITION FOR
REHEARING, REARGUMENT,
RECONSIDERATION, AND AMENDMENT

PROCEDURAL HISTORY

On March 12, 1996 AT&T Communications of the Midwest, Inc. (AT&T) served Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE) with a request to negotiate terms and conditions of interconnection, resale, and access to unbundled network elements under the Federal Telecommunications Act of 1996 (the Act).¹ The parties were unable to reach agreement on many issues, and on August 16, 1996 AT&T petitioned the Commission for arbitration under the Act. On December 12, 1996 the Commission issued an Order resolving the issues submitted for arbitration.

On March 14, 1997 the Commission issued an Order resolving petitions for reconsideration filed by the parties and approving a final interconnection agreement containing both arbitrated and negotiated terms. The March 14 Order required the two companies to make a final compliance filing setting forth the complete text of the final contract as approved by the Commission.

On April 28, 1997 the two companies made the compliance filing. Instead of merely filing a clean copy of the already-approved contract, however, the parties filed a contract containing some newly negotiated terms. The contract was docketed under the second docket number listed above and was approved in an Order issued August 19, 1997.

¹Pub. L. No. 104-104, 110 Stat. 56, codified in scattered sections of Title 47, United States Code.

While the August 19 Order was pending, on July 25, 1997, GTE filed a petition for rehearing, reargument, reconsideration, and amendment of both the Orders in the arbitration case and the decisions made in Commission deliberations on the final contract filed by the parties. GTE claimed the July 18, 1997 decision of the Eighth Circuit Court of Appeals in Iowa Utilities Board v. FCC² invalidated several decisions the Commission had made in those Orders and at those deliberations.

On August 15, 1997 the Department of Public Service and AT&T filed comments opposing the petition. On August 25, 1997 GTE and AT&T filed reply comments.

On October 27, 1997 the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

A. GTE

GTE claimed that the Commission's arbitration Orders, its Order approving the final contract, and the final contract itself were all "based, in substantial part, on the now-vacated portions of the FCC's First Report and Order." The company claimed these Orders, as well as the contract itself, must be revised to comply with federal law.

B. AT&T

AT&T disputed GTE's claim that the Orders and the contract were based on vacated FCC directives. The company also said it would be inefficient for the Commission to take up the merits of GTE's claims when they could be raised in a pending federal court proceeding on the contract or through the alternative dispute resolution procedures established in the contract for dealing with changes in the law.

C. Department of Public Service

The Department of Public Service (the Department) contended the Commission was not the appropriate body to rule on GTE's claims. In the Department's view, GTE should either follow the procedures established in the contract for dealing with changes in the law or appeal the Commission's decision(s) to federal court under 47 U.S.C. § 252(e)(6).

²1997 WL 403401 (8th Cir. July 18, 1997).

B. Commission Action

The Commission agrees with the Department and AT&T that it would be inefficient, if not improper, for it to take up the merits of GTE's petition. Not only does GTE have alternative forums for resolving these issues, but one of them — renegotiation and alternative dispute resolution — is explicitly endorsed by the contract negotiated by the parties and approved by the Commission. Section 9.3 of the contract provides as follows:

If any final and nonappealable legislative, regulatory, judicial or other legal action, including a change in applicable law, materially affects any material terms of this agreement, or the ability of AT&T or GTE to perform any material terms of the agreement, AT&T or GTE may, on 30 days' written notice (delivered not later than 30 days following the date on which such action has become legally binding and has otherwise become final and nonappealable) require that such terms be renegotiated and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. These terms must be approved by the Commission before they become effective. If such new terms are not negotiated within 90 days after such notice, the dispute shall be referred to the alternative dispute resolution procedures ordered by the Commission.

The Commission sees no need to short-circuit this process.

This is not a case in which longstanding expectations have been disrupted by an unexpected court decision, obliging the Commission to step in and restore order. This is a case in which all parties knew that the law was in flux, that there was a pending challenge to the FCC's First Report and Order, and that the Eighth Circuit Court of Appeals had stayed significant portions of that Report and Order. Section 9.3 was the parties' way of dealing with this, and it presents a credible vehicle for GTE to raise the claims raised in its petition.

If GTE prefers a more definitive resolution of its claims, it can in all likelihood raise them in the pending federal court action. For the Commission to interject itself into this dispute at this point would be an unnecessary, cumbersome, and potentially duplicative use of its resources.

For all these reasons, the Commission will deny the petition.

ORDER

1. GTE's petition for rehearing, reargument, reconsideration, and amendment is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION


Earl W. Haar
Executive Secretary

(S E A L)

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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of the letter from Mary Tribby on behalf of AT&T Communications of the Mountain States, Inc., regarding Docket Nos. U-2428-96-417 and U-3175-96-479 were hand delivered on this 20th day of November, 1997, to:

ARIZONA CORPORATION COMMISSION
Docket Control - Utilities Division
1200 W. Washington Street
Phoenix, AZ 85007

COPIES of the foregoing hand-delivered this
20th day of November, 1997 to:

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